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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1339

JEROME S. SPEVACK, *Petitioner,*

v.

J. WILLIAM PIKE, *Respondent.*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

CARLETON U. EDWARDS II
Counsel for Petitioner
1000 Vermont Avenue, N. W.,
Washington, D. C.

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Petitioner, Jerome S. Spevack, prays that this Court grant rehearing of its order of June 12, 1967, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit in the above-entitled matter as prayed for in the petition filed herein on May 1, 1967.[1]

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[1] The District Court Record herein concerned is currently impounded as the result of an order of that Court entered on July 5, 1967, set forth in Appendix A hereto.

REASONS FOR GRANTING REHEARING AND ISSUING WRIT

1. The Impounding Orders in Spevack v. Strauss et al Were Independent of the Restraining Orders Therein, and the Expiration of the Latter Did Not Remove Need for the Former.

Petitioner believes that his Petition for Certiorari did not make clear to the Court that a distinction must be borne in mind between the *restraining orders* in the *Strauss* case, and the *impounding orders* therein, and the effect and purpose of each.

The *restraining orders* were to prevent destruction of Spevack's property rights in his invention by premature and unauthorized dissemination by the A.E.C. Commissioners of materials, etc. describing his invention before his disclosure thereof by issuance of his U. S. Patent (which occurred in July 1959). The restraining orders were effective for that purpose.

The *impounding orders* were for a different purpose. Their purpose was to prevent damage to Spevack by making public certain assertions of performance of *ultra vires* acts by the Defendants, which assertions had been made in the form of incompetent affidavits prepared and submitted during the *in camera* proceedings in the *Strauss et al* case, and which, being given the color of affidavits of responsible officials, if disclosed and required to be defended against could impose great hardship on Spevack. In this connection, it is to be noted that these affidavits formed the basis for the ruling of mootness by the District Court which prevailed in the *Strauss et al* case until, in effect, set aside by this Court's 1959 Order therein.

While any member of the public is entitled to access to any publication or public dissemination made of the materials which were the subject of the restraining orders (i.e. the disclosure of Spevack's inventions), whenever such publication or public dissemination *actually* occurred, no member of the public should have any right to obtain and be in a position to harass Spevack with the impounded affidavits, etc. which were presented to the court in *in camera* proceedings by Strauss et al.

We feel that when this distinction is clearly appreciated, the public interest involved in this Court's 1959 Order in the *Strauss* case, and the need for granting certiorari herein to uphold the same, will be apparent.

2. The Court Was Not Apprised, When It Denied Certiorari, of the Pendency of Relevant Proceedings Before It in a Related Case.

The Court's Order denying Certiorari in the present matter (herein called the *Pike matter*) was entered June 12, 1967, on the last decision day before this Court adjourned for the summer recess. Under the provisions of Rule 35.4. the Clerk of this Court was apparently then holding for twenty days, following the filing thereof five days earlier (on June 7, 1967) a motion brought by Petitioner in *Spevack* v. *Strauss et al,* No. 339, October Term 1958, (herein also called the *Strauss Case*) entitled "Motion for Confirmation of Conclusive Effect of Executed Order of This Court". This twenty day period had not yet expired when this Court adjourned. Thus this Court, when it denied the petition for certiorari in this *Pike matter,* apparently was not cognizant of the following facts:

(1) The pendency of said Motion in the related *Strauss Case;*

(2) The fact that said Motion had been brought to obtain a ruling, between real parties in interest, directly related to propositions relied on as reasons for granting the writ in the Petition for Certiorari in the present case;

(3) The fact that this Court's ruling on said Motion could control the answers to questions I, IIA, IIB and IIC presented by the Petition for Certiorari; and

(4) The fact that this Court's ruling on said Motion could be determinative of all the matters raised by the Petition for Certiorari herein.

Petitioner believes that had the Court been advised of the above facts when it considered the Petition for Certiorari herein, it would have concluded that action on the Petition should be deferred pending a ruling on said Motion, and that if said ruling confirmed the conclusiveness of the Order of this Court as executed by Judge Letts in 1959, such ruling would constitute a basis for granting certiorari herein and remanding this *Pike matter* forthwith to the District Court with instructions to dismiss the Pike Petition. Under the circumstances, and for the reasons set forth in the Petition and herein, we submit that this Petition for Rehearing should be entertained and ruling thereon should be made following ruling on the "Motion for Confirmation" etc. in the *Strauss* case No. 339 O.T. 1958.

3. This Court Should Settle the Distinction, Inherent in the Petition for Certiorari, Between the Public Interest in Maintaining Impounded the Records of Civil Cases Held in Camera to Protect the Interest of the Parties, and the Public Policy of Maintaining Open Records in All Criminal Proceedings.

The Respondent in this *Pike matter* has continuously alleged (without supporting authority) that there is a "recognized policy which dictates that all . . ." (judicial) ". . . proceedings be completely open to public inspection." We submit that this unsupported assertion may have misled the Courts below and this Court, and that it indicates clearly the need for an authoritative pronouncement that there is no such broad "recognized" policy; that the policy of open and public criminal proceedings, dictated by the rejection by our society of anything approaching "star chamber" procedure, is one thing; that the policy that the courts will always be zealous to protect the interests of private litigants from being damaged unnecessarily in the courts of justice, is another thing; and that there is no conflict between these two policies. This is an important principle which should be settled by this Court, and its presence in this case warrants the grant of certiorari.

4. The Opinion of the Chief Justice, Coupled with a Full Consideration of the Petition in Light of the Present Submission, Should Be Persuasive That a Writ Should Issue.

This Court's Order denying certiorari, entered on June 12, 1967, advised:

> ". . . The Chief Justice is of the opinion that certiorari should be granted."

We call to the attention of the Court that the Chief Justice, as Circuit Justice for the District of Columbia had close association with the related cases of *Spevack* v. *Strauss et al.*, No. 641 O.T. 1957 and No. 339, O.T. 1958, and for this reason may well have had a more complete understanding of the public issues involved in the Petition for Certiorari herein than was imparted to the other members of the Court by said Petition.[2] We believe that the present Petition for Rehearing should convey a more complete understanding of such issues to the Court as a whole, and that as a result the Court as a whole will agree with the Chief Justice that "Certiorari should be granted".

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

CARLETON U. EDWARDS II
Counsel for Petitioner
1000 Vermont Avenue, N. W.,
Washington, D. C.

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[2] In this connection we note that it was the Chief Justice who granted stays continuing the injunction against *Strauss et al*, in the said related cases.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

CARLETON U. EDWARDS II
Counsel for Petitioner

APPENDIX A

District Court Order of July 5, 1967

Misc. 4-64

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Order

In re Petition of J. William Pike For Access to Impounded Record

Upon consideration of Intervenor's "Motion for Reconsideration. . . . ." and it appearing to the Court that the Judge who signed the order denying said motion is on vacation, it is by the Court, this 5th day of July, 1967,

ORDERED, that the record in C.A. 880-57 in this Court be re-impounded pending a hearing on Intervenor's aforementioned "Motion for Reconsideration. . . . .", which was filed July 3, 1967, or pending a ruling on Intervenor's "Application for Order Directing the United States District Court for the District of Columbia to Maintain the status quo of the Impounded Record of Proceedings in Civil Action 880-57. . . . .", which was attached as Exhibit "B" to the aforementioned "Motion for Reconsideration.", and which has been filed in the Supreme Court of the United States and has not yet been ruled upon.

[SEAL]

JOSEPH C. WADDY
Judge

ANNA M. THOMPSON
Deputy Clerk